Remarks

After careful consideration of the outstanding FINAL Office Action, this application is presented for favorable reconsideration absent amendment thereto.

The Examiner rejected claims 4 through 6 "under 35 U.S.C. 102(b) as being anticipated by Matsuo (JP 2003054549)." The latter **publication** is not effective invalidating prior art under Section 102(a) of Title 35, or any other portion of Section 102.

The Matsuo Japanese publication was filed on August 20, 2001 but was not published until February 26, 2003. Therefore, the effective date with respect to applying the Matsuo patent is the publication date of February 26, 2003.

As set forth at Section 706.02(a) of the MPEP – "In order to determine which section of 35 U.S.C. 102 applies, the effective date of the application must be determined and compared with the date of the reference." Under Section 706.02 of the MPEP, subsection V entitled **DETERMINING THE EFFECTIVE FILING DATE OF THE APPLICATION**, subsection (c) states: "If the application claims foreign priority... the effective filing date is the filing date of the U.S. application." Immediately thereafter is the following sentence: "The filing date of the foreign priority document is not the effective filing date, although the filing date of the foreign priority document may be used to overcome certain references."

The effective filing date of applicant's present application is the June 11, 2002 filing date of the priority South Korean application (20-2002-0017694) which formed the basis of the filing of the PCT application on May 27, 2003 (PCT/KR03/01033) which designated the United States therein.

Since the publication date of February 26, 2003 of the Matsuo patent does not precede the effective filing date of June 11, 2002 of the instant application, the Matsuo patent publication is not an effective "reference" under 35 U.S.C. § 102(a).

The Examiner should also note that 35 U.S.C. 363 provides that "An international application **designating** the United States shall have the effect, from its international filing date under article 11 of the treaty, of a **national** application for a patent **regularly filed** in the Patent and Trademark Office." Therefore, applicant's international application filed on May 27, 2003 and designating the United States therein has "the effect, from its international filing date" of a nationally filed U.S. application, obviously filed on May 27, 2003. The publication three months prior thereto of the Matsuo document is therefore ineffective, because the present application has the earlier **effective** filing date of July 11, 2002 of the South Korean application filing.

It is also noted that under the worse case scenario, all applicant needs to do to avoid any prior art having an effective date within one year of May 27, 2003 would be to file a declaration or oath proving applicant's invention was made prior thereto. The latter is obvious from the very fact of the filing of applicant's application in South Korea on June 11, 2002.

Lastly, and to avoid any question with respect to the Matsuo document, 35 U.S.C. 365(c) specifically provides that "In accordance with the conditions and requirements of Section 120... a national application shall be entitled to the benefit of the filing date of an international application designating the United States." Accordingly, the effect of the filing of the present application "in the United States" under the latter-quoted sections

necessitates the withdrawal of the Matsuo publication and thereupon the withdrawal of the 35 U.S.C. § 102(a) rejection based thereupon.

Accordingly, the withdrawal of the Matsuo patent (JP 2003054549) is herewith respectfully requested.

The Examiner has also rejected claims 4 through 6 "under 35 U.S.C. 102(a) as being anticipated by Itou t [sic] al. (JP 2003112735)." The Examiner has based the latter rejection upon Figures 8 through 10 of the Itou et al. patent and has fairly described the same until stating "means defined by the material of said protrusion for elastically deforming said convexly upwardly projecting protrusion to an upwardly concavely opening and downwardly projecting protrusion (see fig. 10) upon the application of a downwardly directed manually applied force," etc. In the preceding clause of the latter-quoted portion, the Examiner identified the "convexly upwardly projecting protrusion" as the portion of the end panel 34 (misnumbered "434"). In Figure 9, panel portions 33b, 35 and 36 define "a convexly upwardly projecting protrusion" and the latter illustrates the position of the handle 38 relative thereto with a gap being illustrated between the handle end portion 38a and the panel portion 35a. The curved headed arrow ending in reference character **a** indicates that the handle 38 is to be grasped and pivoted in the direction of the arrow **A** and the latter results in the cross section of the end panel shown in Figure 10 in which the panel portions 33b, 35', 36b and 36 still define a convexly upwardly projecting protrusion. The Examiner in specifically referring to "Fig. 10" states that the protrusion of Figure 9 is transformed "to an upwardly **concavely** opening and **downwardly** projecting protrusion, but nothing could be further from the fact. Therefore, since the Itou et al. patent does not disclose each and every

element claimed in claim 4, it fails as anticipatory prior art. (See Stoller v. Ford Motor Co., 18 USPQ 2d 1545, 1546; Richardson v. Suzuki Motor, Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920.)

In view of the foregoing, the withdrawal of the Section 102(a) rejection based upon Itou et al. and the allowance of each of claims 4 through 6 thereafter is herewith respectfully requested.

The remaining rejection of record is that of claims 4 through 6 "under 35 U.S.C. 102(b) as being anticipated by Reid (4,266,688)." Once again, the Examiner fairly describes the patent to Reid until referencing "fig. 3" and stating that the latter discloses "means defined by the material of said protrusion for elastically deforming said convexly upwardly projecting protrusion to an upwardly **concavely** opening and **downwardly** projecting protrusion." (Emphasis added.) The protrusion is identified by the reference character 11 which actually is the entire end panel of the Reid patent. The end panel 10 is typically domed (as at 23) for attachment thereto of a tab 17 having a lifting end 21 overlying and spaced above (Figures 1 and 2) an unnumbered panel portion which is semi-circular as viewed in top plan to define with the gripping end 21 a gap to facilitate gripping the lifting end 21 of the tab 17. Therefore, this patent discloses in the first instance an upwardly convexly opening portion which remains in a convex condition incident to opening the container and after the end panel has been applied thereto. (See Figure 3.) The cross-sectional configuration of the initially upwardly concavely opening portion of the end panel of Reid does not change in any fashion whatsoever between Figures 2 and 3 or upon the opening of the can end removable portion.

Just as importantly, if the Examiner considers reference character 11 to designate in Fig. 2 "a convexly upwardly projecting protrusion," the latter is not in "underlying" relationship to the handle 21 and excludes any means whatever "for elastically deforming said convexly upwardly projecting protrusion to an upwardly **concavely** opening and downwardly projecting protrusion." The Examiner said "see Fig. 3," but there is no difference between Fig. 2 and Fig. 3.

Therefore, the withdrawal of the Reid patent and the formal allowance of claims 4 through 6 is herewith respectfully requested.

In view of the foregoing, the formal allowance of this application at an early date is respectfully requested.

Very respectfully,

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